IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.678 OF 2006

Shri Kuntesh Sureshbhai Desai ..Petitioner.

V/s.

Shri S.R.Kulkarni & Ors. ..Respondents.

Mr.Atul Jasani i/b. P.V. Vaidya for petitioner.

Mr.Ashok Kotangale for respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 10TH JULY, 2006.

P.C.:

. Rule, returnable forthwith.

2. Mr.Kotangale waives service on behalf of the respondents.

3. Heard finally by consent of parties. Perused the petition.

4. The petition is directed against the order dated 1st December, 2005 incorporated at Exhibit 'L' whereby objections taken by the petitioner for reopening under section 147 and notice under section 148 of the Income Tax Act, 1961 ('the Act' for short) came to be rejected.

5. It is not in dispute that the materials on

which the reopening is sought to be done was very much available with the assessing officer even at the time of assessment. Apart from this, nowhere it is recorded that there was a failure on the part of the assessee to disclose the true material facts and particulars; so as to enable the department to invoke the extended period of limitation.

6. So far as the finding recorded by the Civil Courts are concerned, the same are brushed aside by the assessing officer while deciding the objections observing that the said Judgment and Decree is not final and conclusive. As a matter of fact, no material was available on record of the assessing officer to show that any appeal was preferred against the said Judgment and decree on which reliance was placed by the appellant. In absence of any material, assessing officer could not have brushed aside the said piece of evidence. In the aforesaid circumstances, the impugned order is unsustainable and liable to be quashed and set aside.

7. In the result, impugned order is set aside. Petition is allowed. Rule is made in terms of prayer clause (a) with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)